

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

FILED
03 MAR -9 PM 3:20
RENEE L. HARRIS, CLERK
WESTERN DISTRICT OF MICH
BY gm

KIM ANTHONY TERRELL,

Petitioner,

v.

Case No. 2:03-cv-208
HON. GORDON J. QUIST

LINDA METRISH,

Respondent.

_____ /

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S

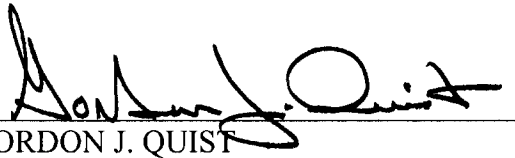
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties. The Court has received objections from the petitioner. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made.

Petitioner argues that he did not procedurally default his claims or alternatively that attorney error is cause for his procedural default. The Michigan Court of Appeals denied relief based upon a procedural rule. Petitioner clearly procedurally defaulted his claims. Petitioner blames his attorney for failing to raise these issues on direct review. However, a review of petitioner's claims establishes that they lack merit. It could not have been attorney error for appellate counsel to decide not to pursue issues that could not succeed on appeal.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

Dated: _____



GORDON J. QUIST
UNITED STATES DISTRICT JUDGE